

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
FRANK FITTERER,)
)
Appellant,)
)
vs.)
)
YAKIMA COUNTY CLEAN AIR)
AUTHORITY,)
)
Respondent.)
)

PCHB No. 410

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER being an appeal of a \$250.00 civil penalty for an alleged open burning violation; having come on regularly for hearing before the Pollution Control Hearings Board on the 8th day of November, 1973; at Yakima, Washington; and appellant Frank Fitterer appearing pro se and respondent Yakima County Clean Air Authority appearing through its attorney David A. Thorner; and Board member W. A. Gissberg present at the hearing; and the Board having considered the sworn testimony, exhibits, records and file herein and having entered on the 4th day of December, 1973, its proposed Findings of

1 Fact, Conclusions of Law and Order; and the Board having served said
2 proposed Findings, Conclusions of Law and Order upon all parties herein
3 by certified mail, return receipt requested and twenty days having
4 elapsed from said service; and

5 The Board having received no exceptions to said proposed Findings,
6 Conclusions and Order; and the Board being fully advised in the premises;
7 now therefore,

8 IT IS HERESY ORDERED, ADJUDGED AND DECREED that said proposed
9 Findings of Fact, Conclusions of Law and Order, dated the 4th day of
10 December, 1973, and incorporated by this reference herein and attached
11 hereto as Exhibit A, are adopted and hereby entered as the Board's
12 Final Findings of Fact, Conclusions of Law and Order herein.

13 DONE at Lacey, Washington this 2nd day of January, 1974.

14 POLLUTION CONTROL HEARINGS BOARD

15 
16 W. A. GISSBERG, Member

17 
18 MARY ELLEN McCAFFREE, Member

19 CERTIFICATION OF MAILING

20 I, Dolores Osland, certify that I mailed copies of the foregoing
21 document on the 2nd day of January, 1974 to each of the following
22 parties:

23 Mr. Frank Fitterer
24 4706 Douglas Drive
Yakima, Washington 98902

25 Mr. David A. Thorner
26 Attorney at Law
314 North Second Street
27 Yakima, Washington 98902

FINAL FINDINGS OF FACT,

1 Yakima County Clean Air
2 Authority
3 201 County Courthouse
4 North 2nd & East "B" Streets
5 Yakima, Washington 98902

6 the foregoing being the last known post office addresses of the above-
7 named parties. I further certify that proper postage had been affixed
8 to the envelopes deposited in the U. S. mail.

9 Dolores Osland
10 DOLORIES OSLAND, Clerk
11 POLLUTION CONTROL HEARINGS BOARD
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
FRANK FITTERER,

Appellant,

vs.

YAKIMA COUNTY CLEAN AIR
AUTHORITY,

Respondent.

PCHB No. 410

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

The informal hearing on the appeal of Frank Fitterer to a Notice of Civil Penalty of \$250.00 for an alleged open burning violation of respondent's Regulation I came before Board member W. A. Gissberg, on November 8, 1973 in Yakima, Washington.

Appellant appeared pro se; respondent through its attorney, David A. Thorner.

From an examination of the transcript of the testimony heard, the exhibits and the file, the Pollution Control Hearings Board makes these

EXHIBIT A

FINDINGS OF FACT

I.

Frank Fitterer, appellant, is the sole proprietor of a land development and home construction business in Yakima County, Washington. In developing what was an orchard site into lots, he caused the trees therein to be pushed down and placed in numerous piles throughout the site which he owned. The piles near the south and westerly property lines were within 200 feet of inhabited homes owned by others.

II.

On December 8, 1972, appellant being desirous of disposing of the trees, he and Robert L. Crossland, Director of the Yakima County Clean Air Authority, conferred on appellant's property relative to the burning of such piles of trees. The testimony is confusing as to what conversation occurred between them but appellant, at least, came away from the meeting with the impression that he had not been told that he could not burn all of the piles of trees and that the conversation was silent as to what he could burn. The content of respondent's burning Regulations were discussed and Mr. Crossland advised appellant that he, appellant, would receive a letter advising him what he could burn.

III.

Respondent's letter of December 11, 1972 to appellant clearly advised appellant where fires were and were not to be permitted on his property. Appellant received, read and understood the contents of such letter. Notwithstanding that fact, on an approved burn day, appellant caused all of the tree piles to be ignited, some of which were within 200 feet of inhabited homes on property owned by others.

1 IV.

2 Section 5.01(1) of respondent's Regulation I makes it unlawful for
3 any person to ignite, cause or permit to be ignited an open fire,
4 except as provided by Section 6.02. That exemption section allows
5 burning for land clearing, under permit, if the burning is not conducted
6 within 100 yards of an inhabited structure other than that located on the
7 property in which the burning is conducted.

8 From which comes the following

9 CONCLUSIONS OF LAW

10 I.

11 Appellant willfully and intentionally violated Section 5.01(1) and
12 Section 6.02(7)(b) and Section 6.02(7)(d) of respondent's Regulation I.

13 II.

14 Appellant contends that land developers generally are being
15 discriminated against by respondent's Regulations and points to the fact
16 that farmers are allowed to burn with any permit under certain limited
17 circumstances. However, respondent has the legal authority to establish
18 reasonable classifications and the classifications of its Regulations are
19 reasonable.

20 III.

21 This Board has no authority to question the wisdom of respondent's
22 burning Regulations if they are otherwise lawful and we find that they are

23 IV.

24 While the civil penalty of \$250.00 is the maximum amount which could
25 have been invoked, the fact that appellant willfully and intentionally
26 disregarded the provisions of his burn permit, although clearly under-

1 standing the contents thereof, warrants the imposition of such maximum
2 civil penalty.

3 THEREFORE, the Pollution Control Hearings Board makes this

4 ORDER

5 The appeal is denied and the civil penalty is affirmed.

6 DONE at Lacey, Washington this 4th day of December, 1973.

7 POLLUTION CONTROL HEARINGS BOARD

8 ~~WALT WOODWARD~~
9 WALT WOODWARD, Chairman

10 W. A. GISSBERG
11 W. A. GISSBERG, Member

12 MARY ELLEN McCaffree
13 MARY ELLEN McCaffree, Member
14
15
16
17
18
19
20
21
22
23
24
25
26

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER